

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1451 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KESHARBHAI R DESAI

Versus

HARIJAN BABABHAI LALLUBHAI SHRIMALI

Appearance:

MR PK JANI for Petitioner

MS JAYSHREE C BHATT for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/01/97

ORAL JUDGEMENT

By way of this Special Criminal Application, the petitioner Kesarbhai Desai seeks direction to quash Complaint No.CR.II 76/96 registered at police station Shihori, Taluka Kankarej, District Banaskantha.

2. It appears that one Harijan, Bababhai Lallubhai Shrimali - non-applicant No.1 lodged FIR at police

station Shihori on 3.10.1996 against four accused persons namely; A-1 Khangarbhai Visabhai Desai, A-2 Karmasibhai Khangarbhai Desai, A-3 Kesharbhai Shankarbhai Desai and A-4 Rameshbhai Shankarbhai Desai. It is alleged that the accused persons gave threat to the complainant saying that he was trying to take away the property land bearing No.335/105, and thereafter abused in filthy language like "Dheda" and also used derogatory words and further threatened the complainant of dire consequences. I have gone through the complaint. It appears that some specific allegations have been made against the accused No.1 and 2, but there is no allegation so far as the present applicant No.3 - Kesarbhai R Desai is concerned. There is a general and vague allegation that Kesarbhai R Desai is an Advocate and he is instigating the crime against the complainant. Even if this allegation is taken to be true, on the face value, no offence can be attracted to the accused for offence under sections 504, 506 (2), 352 and 114 of the Indian Penal Code and section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Ms.Jayashree Bhatt, learned advocate appearing for the non-applicant No.2 referred to decisions of the Apex Court in the case of Mushtaq Ahmed v. Mohd.Habibur Rehman Faizi & Ors., reported in JT 96(1) SC 656 and in the case of K M Mathew vs. State of Kerala & Anr., reported in AIR 1992 SC 2206 and in the case of Govindbhai Chhaganbhai vs. State of Gujarat, reported in 1993(1) GLH 568. It is true that the petitioner could have raised contention that there is no case against him by making application under section 239 of the Cr.P.C. but considering the fact that the petitioner is an Advocate and undue harrassment is likely to be caused to him by such sort of prosecution, I consider it appropriate to examine the entire matter in this Application under section 482 of the Cr.P.C.

3. Having regard to the materials on record and the fact that whatever allegations are made in the complaint, even if they are accepted, on its face value, no offence can be made out against the applicant No.2. The present case is squarely falls within the categories No.1 and 7 mentioned in Bhajanlal's case reported in JT 1990 (4) SC 650.

4. In view of the aforesaid, this Special Criminal Application is allowed. C.R. No.II - 76/96 registered at police station Shihori, District Banaskantha is quashed and set aside qua the petitioner Kesarbhai R Desai. Rule made absolute accordingly.

